

REMARKS

Claim 1 has been amended. Therefore, claims 1, 2, 5, and 7-11 remain pending in the application.

I. Summary of Office Action

Claim 1 was rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. This rejection was based on the amended language of claim 1 regarding the placement of the device “completely internally” within the knee during the surgical operation.

Claims 1 was also rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. This rejection was based on the amended language of claim 1 as regarding the placement of the device “completely internally” within the knee during the surgical operation.

Claims 1 and 2 were rejected under 35 U.S.C. 102(b) as being anticipated by Tuke et al. (US 5,800,438).

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Tuke in view of Muhs (US 5,701,370).

Claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tuke in view of Ishizuka (US 6,716,043).

Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Tuke in view of Ishizuka, and further in view of Weismann (US 3,722,100).

Claims 10 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tuke in view of Ishizuka and Weisman, and further in view of Muhs.

All of the above claims rejections are respectfully traversed for the following reasons.

II. Rejections under §112, first paragraph, and §101

The language in claim 1 which has given rise to the rejections under §112, first paragraph, and §101 has been deleted. Therefore, it is respectfully requested that such rejections be withdrawn.

III. Arguments in favor of allowance over cited prior art

A. Differences between Tuke (US 5,800,438) and claim 1

With respect to claim 1, it is apparent that Tuke requires an external means of applying tension to the “planar members” 1, 8 of that device. In other words, the handles, springs, and all other components of Tuke which function as a “tensioning means” are incapable of “residing entirely between” the first planar member and the second planar member of Tuke. As can be seen, claim 1 has been amended to require that such tensioning means (in whatever embodiment it takes) resides entirely between the first and second planar members. Tuke fails to teach such limitations, and it does not anticipate the invention of claim 1 as amended. Furthermore, there is nothing about Tuke which would teach or motivate a person of ordinary skill in the art to place such tensioning means entirely between the first and second planar members. Therefore, Tuke should not render claim 1, as amended, obvious.

Support for this amendment exists throughout the specification and in the drawings. Specifically, Figures 1-3 each depict the embodiments which include the tensioning means residing entirely between the first and second planar members. As such, the amendment does not introduce any new matter, but rather claims subject matter that which is clearly inherent in the written description and in the drawings.

Moreover, this amendment does not require any further searching by the Office, and it does not necessitate any new ground of rejection. It has always been clear from the written

description and the drawings that such tensioning members will reside entirely between the first and second planar members.

Therefore, it is respectfully requested that the rejection of claim 1 based on Tuke be withdrawn.

The remaining claims, claims 2, 5, and 7-11, add further limitations to the invention of claim 1. The cited art with respect to the rejections of these claims has nothing to do with the question of whether the tensioning means resides entirely between the first and second planar members. Therefore, it is respectfully requested that the rejections of such claims be withdrawn.

IV. Conclusion

For the reasons expressed herein, the applicant respectfully requests that a Notice of Allowance be issued in this case. If the Office believes that there remain any impediments to such a Notice of Allowance, the undersigned would welcome a telephone call to resolve such issues as quickly as possible.

Respectfully submitted:

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